

## Chapter 3 – General Institution

### **BP 3540 Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking**

#### **References:**

California Education Code Sections 67385, 67380, 67383, 67385, 67386 (a)(1) - 67389(a)(1), 67395.7, and 76200 et seq.; 34 Code of Federal Regulations Section 668.46; California Penal Code 111653.7 Sections 242, 243.4, 245, and 261 et seq., 289; 13700(b); 668.46; Title IX of the Education Amendments of 1972; Violence Against Women Reauthorization Act of 2013 (VAWA)

#### **I. Policy Statement:**

Mt. San Antonio College is committed to creating and maintaining an environment that promotes safety and mutual respect of all members of the campus community. The College prohibits Sexual Misconduct of any kind, Dating Violence, Domestic Violence, and Stalking. Such misconduct violates College policy and may also violate state or federal law.

All sexual activity between members of the College community must be based on Affirmative Consent. Engaging in any sexual activity without first obtaining Affirmative Consent to the specific sexual activity is Sexual Misconduct and constitutes a violation of this policy, whether or not the sexual activity violates any civil or criminal law.

The College shall respond promptly and effectively to all complaints of Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking, and shall take appropriate action to prevent, investigate, correct, and discipline conduct that violates this policy. Investigations into complaints of Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking will be conducted in accordance with the procedures set forth in AP 3435, Discrimination and Harassment Investigations.

If a Responsible Employee knows, or reasonably should have known, of an incident of Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking, occurring on or off campus, they must report such incidents to the Title IX Coordinator as soon as practically possible.

Procedures for addressing Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking shall be administered in accordance with AP 3540 which meets the criteria contained in California Education Code 67385, 67385.7, and 34 C.F.R. § 668.46.

Employees and students who are found to have engaged in Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking, as defined in this policy, may be subject to corrective action in accordance with applicable Board Policies and/or state or federal law. Administrative Procedure 5520 - Student Discipline Procedures shall be initiated when a student is found in violation of this policy.

## II. Policy Definitions:

- A. Affirmative Consent<sup>1</sup> - consensual sexual activity requires an ongoing Affirmative Consent for the act in which the participants are involved. More specifically, Affirmative Consent means an expressed, affirmative, conscious, mutual, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that each person has the Affirmative Consent of the other, or others, to engage the sexual activity.

Lack of protest or resistance does not mean Affirmative Consent, nor does silence mean consent. There is no Affirmative Consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used to obtain Affirmative Consent. Affirmative Consent must be ongoing throughout a sexual activity and can be revoked at any time.

The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never, by itself, be assumed to be an indicator of Affirmative Consent.

If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no Affirmative Consent; this includes impairment or incapacitation due to alcohol or drug consumption or being asleep or unconscious. A person with a medical or mental disability may also lack the capacity to give Affirmative Consent.

Sexual activity with a minor (under 18 years old) is never consensual because a minor is considered incapable of giving legal consent due to age.

- B. Complainant - any person who files a complaint or any person who is reported to have experienced a violation of this policy in cases where some other person has made a report on that person's behalf.
- C. Dating Violence<sup>2</sup> - intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself or another, or a felony or misdemeanor crime of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim is Dating Violence. The existence of such a relationship shall be determined based on a consideration of the following factors:
1. The length of the relationship;
  2. The type of relationship; and/or
  3. The frequency of interaction between the persons involved in the relationship.

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<sup>1</sup> See Cal Ed Code § 67386 (A)(1).

<sup>2</sup> See 34 C.F.R. § 668.46

- D. Domestic Violence<sup>3</sup> - intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself or another, or a felony or misdemeanor crime of violence, committed:
1. By a current or former spouse or intimate partner of the victim;
  2. By a person with whom the victim shares a child in common;
  3. By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
  4. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
  5. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- E. Preponderance of the Evidence<sup>4</sup> - the standard of evidence applied to investigations of allegations of Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking. Preponderance of the Evidence means the greater weight of the evidence. In applying this standard, the investigator will consider whether the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side.
- F. Respondent - an employee, student, or third party who is alleged to have violated this policy.
- G. Responsible Employee<sup>5</sup> - a designated employee who has the authority to take action to redress sexual misconduct, dating violence, domestic violence, or stalking; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate school designee; or whom an individual could reasonably believe has this authority or duty. At the College, that includes:
1. Classified Managers;
  2. Educational Administrators;
  3. Department Chair-persons;
  4. Campus Safety employees;
  5. Student Services employees, including: Counselors, Education Advisors, Transfer Specialists, Program Coordinators, Program/Project Coordinators, Program

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<sup>3</sup> See 34 C.F.R. § 668.46 & See Cal. Penal Code § 13700

<sup>4</sup> See Cal. Ed. Code § 67386 (a)(3).

<sup>5</sup> See 2001 *Revised Sexual Harassment Guidance*, Office of Civil Rights

Specialists, Outreach Specialists, Interpreters, Peer Advisors, Ambassadors, Mentors, Tutors, and Student Life employees;

6. Human Resources employees;
  7. Kinesiology, Athletics, and Dance employees; and
  8. Any employee while serving as an advisor to student organizations while traveling with students for educational or extracurricular purposes, except those without a duty to report as described in AP 3540.
- H. Sexual Misconduct - Sexual Misconduct is defined as engaging in any sexual activity without first obtaining Affirmative Consent to the specific sexual activity. Sexual activity includes, but is not limited to, kissing, touching intimate body parts, fondling, intercourse, penetration of any intimate body part, and oral sex. It also includes any unwelcome physical sexual acts such as unwelcomed sexual touching, Sexual Assault, Sexual Battery, Rape, and Incest.

Sexual Misconduct may include using physical force, violence, threat, or intimidation; ignoring the objections of the other person; causing the other person's intoxication or incapacitation through the use of drugs or alcohol; or taking advantage of the other person's incapacitation (including voluntary intoxication) to engage in sexual activity. Sexual activity with a minor is never consensual when the Complainant is under 18 years old because the minor is considered incapable of giving legal consent due to age. Incest is also a form of Sexual Misconduct.

1. Incest<sup>6</sup> - sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
2. Sexual Assault<sup>7</sup> - a form of Sexual Misconduct and is actual or attempted sexual contact with another person without that person's Affirmative Consent. Sexual Assault includes, but is not limited to, Sexual Battery, Rape, or an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another because of that person's gender or sex.
3. Sexual Battery<sup>8</sup> - a form of Sexual Misconduct and is intentional touching of another person's body in a sexual nature without that person's Affirmative Consent; other intentional sexual contact with another person without that person's Affirmative Consent for the purpose of sexual arousal, sexual gratification, or sexual abuse; or coercing, forcing, or attempting to coerce or force a person to touch another person's intimate parts without that person's consent.
4. Sexual Exploitation<sup>9</sup> - a form of Sexual Misconduct and is defined as a person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, regardless of the victim's affiliation with the College, including, but not limited to, any of the following:

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<sup>6</sup> See 34 C.F.R. § 668.46

<sup>7</sup> See Cal. Ed. Code 76033 & Cal. Penal Code §240

<sup>8</sup> See Cal. Ed. Code 76033 & Cal. Penal Code §243.4

<sup>9</sup> See Cal. Ed. Code 76033

- a. Prostituting another person.
  - b. Recording images, including video, photograph, or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent.
  - c. Distributing images, including video, photograph, or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure and objected to the disclosure.
  - d. Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of arousing or gratifying sexual desire.
5. Rape<sup>10</sup> - a form of Sexual Misconduct and is non-consensual sexual intercourse, which is penetration, no matter how slight, of the vagina or anus of a person by any body part of another person, or by an object, or the mouth of a person, or by a sex organ of another person, without the other person's Affirmative Consent. Rape may also involve the use of threat of force, violence, coercion, or immediate and unlawful bodily injury or threats of future retaliation and duress. Sexual acts including intercourse are considered non-consensual when a person does not give Affirmative Consent; is incapable of giving Affirmative Consent because the person is incapacitated from sleep, alcohol, and/or drugs; is under 18 years old; or if a mental disorder or developmental or physical disability renders a person incapable of giving Affirmative Consent.
- I. Stalking<sup>11</sup> - a Course of Conduct directed at a specific person that would cause a Reasonable Person to fear for the safety of self or others' safety or to suffer Substantial Emotional Distress. For purposes of this definition:
1. Course of Conduct - two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property;
  2. Reasonable Person - a reasonable person under similar circumstances and with the same Protected Category as the Complainant; and
  3. Substantial Emotional Distress - significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

Approved: April 28, 2004

Revised: April 26, 2006

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<sup>10</sup> See Cal. Ed. Code 76033 & See Cal. Penal Code §§ 261-263

<sup>11</sup> See 34 C.F.R. § 668.46 & See Cal. Penal Code § 646.9

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